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RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

40 N.J.R. 1075(a)

Proposed Amendments: *N.J.A.C. 13:45A-24.1 and 24.3*

[Click here to view Interested Persons Statement](#)

Unsafe Children's Products

Authorized By: Lawrence DeMarzo, Acting Director, New Jersey Division of Consumer Affairs.

Authority: *N.J.S.A. 56:8-4*.

Calendar Reference: See Summary below for explanation of exemption to calendar requirement.

Proposal Number: PRN 2008-57.

Submit written comments by May 2, 2008 to:

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The agency proposal follows:

Summary

P.L. 2007, c. 124 (the Act), enacted on August 6, 2007, supplements the Consumer Fraud Act, P.L. 1960, c. 39 (*N.J.S.A. 56:8-1 et seq.*). Among other things, the Act requires the Director of the Division of Consumer Affairs to make available to the public a list of children's products that have been recalled by a Federal agency or the product's manufacturer, distributor or importer or as to which a Federal agency has issued a warning that the intended use of the

product constitutes a safety hazard.

The Consumer Product Safety Commission (CPSC) is the Federal agency charged with protecting the public from unreasonable risks of serious injury or death from consumer products under the agency's jurisdiction, including toys and other children's products. The CPSC maintains on its website lists of consumer products that have been recalled or as to which a safety warning has been issued, including children's products (not including toys) and toys.

N.J.A.C. 13:45A-24 contains the Division's current rules on toy and bicycle safety. The Director is proposing amendments to *N.J.A.C. 13:45A-24.1* and *24.3* to implement the Act. The proposed amendment to *N.J.A.C. 13:45A-24.1* adds as a purpose of the subchapter the implementation of the Act. Proposed amendments to *N.J.A.C. 13:45A-24.3(a)* add definitions of terms found in the Act that are used in the proposed rule amendments, specifically "child," "children's product" and "unsafe children's product."

The Director is proposing amendments at *N.J.A.C. 13:45A-24.3(e)*, (f) and (g) under which the Director will provide a list or lists of unsafe children's products on the Division's website. The Division's list or lists shall be taken from the CPSC list or lists and may be a direct link to the list or lists on the CPSC's website. The Division will give a consumer a copy of a list or lists upon request at no cost.

The Director has recently adopted an amendment to *N.J.A.C. 13:45A-24.3(d)* concerning the place where notices of defective or hazardous toys and other products must be posted in stores, which was published in the New Jersey Register at *39 N.J.R. 4850(a)*. That proposal and this proposal are independent; neither affects the other.

The Director has determined that the comment period for this proposal shall be 60 days. Therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this proposal is excepted from the rulemaking calendar requirement.

Social Impact

The Director believes that the proposed amendments will benefit consumers seeking to purchase children's products, including toys, for their own children or other children and to parents and guardians of children who receive the products. They will have a direct link to the CPSC list of recalled children's products from the Consumer Affairs website, which may be easier for New Jersey consumers to find.

Economic Impact

The proposed amendments are not expected to have an economic impact because current rules of the Division (*N.J.A.C. 13:45A-4.1*) make it an unconscionable commercial practice for any person to sell or offer for sale any consumer product contrary to any order of the CPSC.

Federal Standards Statement

A Federal standards analysis is not applicable to the rulemaking because the proposed amendments do not contain standards; rather, they should make consumers more aware of action taken by a Federal agency. As such, the proposed amendments are complementary to the Federal program.

Jobs Impact

The proposed amendments are not expected to create or eliminate any jobs in the State. The children's products and toys that have been identified as unsafe may not be sold in the State under current law.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. See the Summary. The proposed amendments state how the Division will implement the requirements placed on it by the Act.

Smart Growth Impact

The Division does not believe that the proposed amendments will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:45A-24.1 Purpose and scope

(a) The purpose of this subchapter is:

1. (No change.)
2. To implement P.L. 1991, c.295, by setting forth regulations for disseminating notice of defective or hazardous toys or other articles intended for use by children; [and]
3. To implement P.L. 1991, c.323, by setting forth regulations for a notice promoting the use of helmets to be affixed to bicycles sold at retail in the State of New Jersey[.]; **and**
- 4. To implement P.L. 2007, c. 124, by setting forth regulations concerning the dissemination of a list of children's products that have been identified as unsafe.**

(b) (No change.)

13:45A-24.3 [Toy recall] **Recall** notices **for children's products**

(a) As used in this section, the following words shall have the following meanings:

"Child" means a person less than 14 years of age.

"Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

- 1. The product is designed or intended for the care of, or use by, a child; or**
- 2. The product is designed or intended to come into contact with a child while the product is used.**

A product is not a "children's product" for the purposes of this subchapter if it may be used by or for the care of a child, but is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child, or if it is a balloon, medication, drug, or food or is

intended to be ingested.

. . .

"Unsafe children's product" means a children's product:

1. That has been recalled for any reason by a Federal agency or the product's manufacturer, distributor, or importer and the recall has not been rescinded; or
2. Is the subject of a warning issued by a Federal agency that its intended use constitutes a safety hazard and the warning has not been rescinded.

(b)-(d) (No change)

(e) The Director shall [publish and disseminate to the public, at least quarter-annually, a summary of toys and other items intended for use by children, which items have been found to be defective or hazardous] **create, maintain, and update on the website of the Division** (<http://www.nj.gov/oag/ca/home.htm>) **a comprehensive list or lists of children's products that have been identified as unsafe children's products.** [The summary shall be drawn from findings of the U.S. Consumer Product Safety Commission and voluntary notices from manufacturers or distributors. In addition, the Director shall alert the public about particular toys or items, as warranted from time to time.]

(f) The Division's list or lists of unsafe children's products shall be taken from the Consumer Product Safety Commission's list or lists, and may be a direct link to the list or lists on the Consumer Product Safety Commission's website.

(g) In addition to posting the list of unsafe children's products on its website, the Division shall make a copy of the list available to the public at no cost upon request made to the Division by telephone at 800-242-5846 (in State) or 973-504-6200 or by fax at 973-273-8035.

[(f)] **(h)** (No change in text.)